

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

EARL ROSS and MAXCINE ROSS

PLAINTIFFS

V.

CAUSE NO. 5:17-CV-46-DCB-MTP

QUALITY HOMES OF MCCOMB, INC.,
MISS/LOU MOBILE HOME MOVERS, LLC,
PLATINUM HOMES, LLC, and
JOEY HARBIN

DEFENDANTS

ORDER

This cause is before the Court on Earl and Maxcine Ross's Motion for Default Judgment **[Doc. 51]** against Defendant Miss/Lou Mobile Home Movers, LLC.

A party cannot obtain a default judgment under Federal Rule of Civil Procedure 55(b) without having first obtained an entry of default by the Clerk under Federal Rule of Civil Procedure 55(a).¹ Johnson v. Dayton Elec. Mfg. Co., 140 F.3d 781, 783 (8th Cir. 1998); 10 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure, § 2682 (4th ed.).

¹ The Clerk shall enter a default "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." FED. R. CIV. P. 55(a).

Because the Rosses have not applied for and obtained an entry of default by the Clerk, they are not entitled to a default judgment against Miss/Lou Mobile Home Movers, LLC. See, e.g., Ronaldo Designer Jewelry, Inc. v. Prinzo, 5:14-CV-73-DCB-MTP, 2015 U.S. Dist. LEXIS 117743, at *1 (S.D. Miss. Sept. 3, 2015) (denying motion for default judgment when plaintiff failed to first obtain an entry of default); Ex rel. Garibaldi v. Orleans Parish Sch. Bd., No. 96-464, 1997 WL 375666, at *1 (E.D. La. July 2, 1997) (same).

Accordingly,

IT IS ORDERED that Earl and Maxcine Ross's Motion for Default Judgment **[Doc. 51]** against Miss/Lou Mobile Home Movers, LLC is DENIED WITHOUT PREJUDICE. The Rosses must apply for and obtain an entry of default by the Clerk before moving the Court for entry of a default judgment.

SO ORDERED, this the 16th day of May, 2018.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE